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6 **UNITED STATES DISTRICT COURT**
7 **CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**
8

9 FAN YANG, an individual,
10 Plaintiff,

11 vs.

12 HUNG ERN TOH, an individual; BARR
13 CONSULTING AND HOLDINGS, INC.,
14 a California corporation; BARR
15 HOLDINGS, LLC; a Nevada Limited
16 Liability Company, BEVERLY HILLS
17 ESCROW, a California Corporation,
18 DOES 1-10

19 Defendants.

20 LIPING ZHANG, an individual,
21 Plaintiff,

22 vs.

23 HUNG ERN TOH, an individual; BARR
24 CONSULTING AND HOLDINGS, INC.,
25 a California corporation; BARR
26 HOLDINGS, LLC; a Nevada Limited
27 Liability Company, BEVERLY HILLS
28 ESCROW, a California Corporation,
DOES 1-10

Defendants.

CASE NO. 2:17-cv-06161 CAS
(RAOx)

**STIPULATED PROTECTIVE
ORDER**

CASE NO. 2:17-cv-07745 CAS
(RAOx)

**STIPULATED PROTECTIVE
ORDER¹**

¹ This Stipulated Protective Order is substantially based on the model protective order provided under Magistrate Judge Rozella A. Oliver's Procedures.

1. A. PURPOSES AND LIMITATIONS

Discovery in these actions is likely to involve production of confidential, proprietary or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles.

B. GOOD CAUSE STATEMENT

This action is likely to involve financial, confidential, personal, private, and/or proprietary information for which special protection from public disclosure and from use for any purpose other than prosecution of this action is warranted. Such confidential and proprietary materials and information consist of, among other things, escrow files, confidential business or financial information, information regarding confidential business practices, or other confidential or commercial information (including information implicating privacy rights of third parties), information otherwise generally unavailable to the public, or which may be privileged or otherwise protected from disclosure under state or federal statutes, court rules, case decisions, or common law. Accordingly, to expedite the flow of information, to facilitate the prompt resolution of disputes over confidentiality of documents and discovery materials, to adequately protect information the parties are required and entitled to keep confidential, to ensure that the parties are permitted reasonable necessary uses of such material in preparation for and in the conduct of trial, to address their handling at the end of the litigation, and serve the ends of justice, a protective order for such information is justified in this matter. It is the intent of the parties that information will not be designated as confidential

1 for tactical reasons and that nothing be so designated without a good faith belief
2 that it has been maintained in a confidential, non-public manner, and there is good
3 cause why it should not be part of the public record of this case.

4 C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER
5 SEAL

6 The parties further acknowledge, as set forth in Section 12.3, below, that
7 this Stipulated Protective Order does not entitle them to file confidential
8 information under seal; Local Civil Rule 79-5 sets forth the procedures that must
9 be followed and the standards that will be applied when a party seeks permission
10 from the court to file material under seal.

11 There is a strong presumption that the public has a right of access to judicial
12 proceedings and records in civil cases. In connection with non-dispositive
13 motions, good cause must be shown to support a filing under seal. *See Kamakana*
14 *v. City and County of Honolulu*, 447 F.3d 1172, 1176 (9th Cir. 2006), *Phillips v.*
15 *Gen. Motors Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002), *Makar-Welbon v.*
16 *Sony Electronics, Inc.*, 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated
17 protective orders require good cause showing), and a specific showing of good
18 cause or compelling reasons with proper evidentiary support and legal
19 justification, must be made with respect to Protected Material that a party seeks to
20 file under seal. The parties' mere designation of Disclosure or Discovery Material
21 as CONFIDENTIAL does not— without the submission of competent evidence by
22 declaration, establishing that the material sought to be filed under seal qualifies as
23 confidential, privileged, or otherwise protectable—constitute good cause.

24 Further, if a party requests sealing related to a dispositive motion or trial,
25 then compelling reasons, not only good cause, for the sealing must be shown, and
26 the relief sought shall be narrowly tailored to serve the specific interest to be
27 protected. *See Pintos v. Pacific Creditors Ass'n*, 605 F.3d 665, 677-79 (9th Cir.
28 2010). For each item or type of information, document, or thing sought to be filed

1 or introduced under seal in connection with a dispositive motion or trial, the party
2 seeking protection must articulate compelling reasons, supported by specific facts
3 and legal justification, for the requested sealing order. Again, competent evidence
4 supporting the application to file documents under seal must be provided by
5 declaration.

6 Any document that is not confidential, privileged, or otherwise protectable
7 in its entirety will not be filed under seal if the confidential portions can be
8 redacted. If documents can be redacted, then a redacted version for public viewing,
9 omitting only the confidential, privileged, or otherwise protectable portions of the
10 document, shall be filed. Any application that seeks to file documents under seal
11 in their entirety should include an explanation of why redaction is not feasible.

12 13 2. DEFINITIONS

14 2.1 Actions: *Yang v. Toh et al*, CASE NO. 2:17-cv-06161 CAS (RAOx)
15 and related case *Zhang v. Toh et al*, CASE NO. 2:17-cv-07745 CAS (RAOx).

16 2.2 Challenging Party: a Party or Non-Party that challenges the
17 designation of information or items under this Order.

18 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
19 how it is generated, stored or maintained) or tangible things that qualify for
20 protection under Federal Rule of Civil Procedure 26(c), and as indicated above in
21 the Good Cause Statement.

22 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
23 their support staff).

24 2.5 Designating Party: a Party or Non-Party that designates information
25 or items that it produces in disclosures or in responses to discovery as
26 “CONFIDENTIAL.”

27 2.6 Disclosure or Discovery Material: all items or information, regardless
28 of the medium or manner in which it is generated, stored, or maintained (including,

1 among other things, testimony, transcripts, and tangible things), that are produced
2 or generated in disclosures or responses to discovery in this matter.

3 2.7 Expert: a person with specialized knowledge or experience in a
4 matter pertinent to the litigation who has been retained by a Party or its counsel to
5 serve as an expert witness or as a consultant in this Action.

6 2.8 House Counsel: attorneys who are employees of a party to this
7 Action. House Counsel does not include Outside Counsel of Record or any other
8 outside counsel.

9 2.9 Non-Party: any natural person, partnership, corporation, association
10 or other legal entity not named as a Party to this action.

11 2.10 Outside Counsel of Record: attorneys who are not employees of a
12 party to this Action but are retained to represent or advise a party to this Action
13 and have appeared in this Action on behalf of that party or are affiliated with a law
14 firm that has appeared on behalf of that party, and includes support staff.

15 2.11 Party: any party to this Action, including all of its officers, directors,
16 employees, consultants, insurers, retained experts, and Outside Counsel of Record
17 (and their support staffs).

18 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
19 Discovery Material in this Action.

20 2.13 Professional Vendors: persons or entities that provide litigation
21 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
22 demonstrations, and organizing, storing, or retrieving data in any form or medium)
23 and their employees and subcontractors.

24 2.14 Protected Material: any Disclosure or Discovery Material that is
25 designated as "CONFIDENTIAL."

26 2.15 Receiving Party: a Party that receives Disclosure or Discovery
27 Material from a Producing Party.
28

1 3. SCOPE

2 The protections conferred by this Stipulation and Order cover not only
3 Protected Material (as defined above), but also (1) any information copied or
4 extracted from Protected Material; (2) all copies, excerpts, summaries, or
5 compilations of Protected Material; and (3) any testimony, conversations, or
6 presentations by Parties or their Counsel that might reveal Protected Material.

7 Any use of Protected Material at trial shall be governed by the orders of the
8 trial judge. This Order does not govern the use of Protected Material at trial.

9
10 4. DURATION

11 Once a case proceeds to trial, information that was designated as
12 CONFIDENTIAL or maintained pursuant to this protective order used or
13 introduced as an exhibit at trial becomes public and will be presumptively
14 available to all members of the public, including the press, unless compelling
15 reasons supported by specific factual findings to proceed otherwise are made to the
16 trial judge in advance of or during the trial. *See Kamakana*, 447 F.3d at 1180-81
17 (distinguishing “good cause” showing for sealing documents produced in
18 discovery from “compelling reasons” standard when merits-related documents are
19 part of court record). Accordingly, the terms of this protective order do not extend
20 beyond the commencement of the trial.

21
22 5. DESIGNATING PROTECTED MATERIAL

23 5.1 Exercise of Restraint and Care in Designating Material for Protection.

24 Each Party or Non-Party that designates information or items for protection
25 under this Order must take care to limit any such designation to specific material
26 that qualifies under the appropriate standards. The Designating Party must
27 designate for protection only those parts of material, documents, items or oral or
28 written communications that qualify so that other portions of the material,

1 documents, items or communications for which protection is not warranted are not
2 swept unjustifiably within the ambit of this Order.

3 Mass, indiscriminate or routinized designations are prohibited. Designations
4 that are shown to be clearly unjustified or that have been made for an improper
5 purpose (e.g., to unnecessarily encumber the case development process or to
6 impose unnecessary expenses and burdens on other parties) may expose the
7 Designating Party to sanctions.

8 If it comes to a Designating Party's attention that information or items that it
9 designated for protection do not qualify for protection, that Designating Party must
10 promptly notify all other Parties that it is withdrawing the inapplicable designation.

11 5.2 Manner and Timing of Designations. Except as otherwise provided in
12 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
13 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
14 under this Order must be clearly so designated before the material is disclosed or
15 produced.

16 Designation in conformity with this Order requires:

17 (a) for information in documentary form (e.g., paper or electronic
18 documents, but excluding transcripts of depositions or other pretrial or trial
19 proceedings), that the Producing Party affix at a minimum, the legend
20 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that
21 contains protected material. If only a portion of the material on a page qualifies for
22 protection, the Producing Party also must clearly identify the protected portion(s)
23 (e.g., by making appropriate markings in the margins).

24 A Party or Non-Party that makes original documents available for
25 inspection need not designate them for protection until after the inspecting Party
26 has indicated which documents it would like copied and produced. During the
27 inspection and before the designation, all of the material made available for
28 inspection shall be deemed "CONFIDENTIAL." After the inspecting Party has

1 identified the documents it wants copied and produced, the Producing Party must
2 determine which documents, or portions thereof, qualify for protection under this
3 Order. Then, before producing the specified documents, the Producing Party must
4 affix the “CONFIDENTIAL legend” to each page that contains Protected
5 Material. If only a portion of the material on a page qualifies for protection, the
6 Producing Party also must clearly identify the protected portion(s) (e.g., by
7 making appropriate markings in the margins).

8 (b) for testimony given in depositions that the Designating Party
9 identifies the Disclosure or Discovery Material on the record, before the close of
10 the deposition all protected testimony.

11 (c) for information produced in some form other than documentary and
12 for any other tangible items, that the Producing Party affix in a prominent place on
13 the exterior of the container or containers in which the information is stored the
14 legend “CONFIDENTIAL.” If only a portion or portions of the information
15 warrants protection, the Producing Party, to the extent practicable, shall identify
16 the protected portion(s).

17 5.3 Inadvertent Failures to Designate. If timely corrected within 45 days,
18 an inadvertent failure to designate qualified information or items does not,
19 standing alone, waive the Designating Party’s right to secure protection under this
20 Order for such material. Upon timely correction of a designation within 45 days,
21 the Receiving Party must make reasonable efforts to assure that the material is
22 treated in accordance with the provisions of this Order.

23 24 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

25 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
26 designation of confidentiality at any time that is consistent with the Court’s
27 Scheduling Order.
28

1 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
2 resolution process under Local Rule 37.1 et seq.

3 6.3 The burden of persuasion in any such challenge proceeding shall be
4 on the Designating Party. Frivolous challenges, and those made for an improper
5 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
6 parties) may expose the Challenging Party to sanctions. Unless the Designating
7 Party has waived or withdrawn the confidentiality designation, all parties shall
8 continue to afford the material in question the level of protection to which it is
9 entitled under the Producing Party's designation until the Court rules on the
10 challenge.

11
12 7. ACCESS TO AND USE OF PROTECTED MATERIAL

13 7.1 Basic Principles. A Receiving Party may use Protected Material that
14 is disclosed or produced by another Party or by a Non-Party in connection with this
15 Action only for prosecuting, defending or attempting to settle this Action. Such
16 Protected Material may be disclosed only to the categories of persons and under
17 the conditions described in this Order. When the Action has been terminated, a
18 Receiving Party must comply with the provisions of section 13 below (FINAL
19 DISPOSITION).

20 Protected Material must be stored and maintained by a Receiving Party at a
21 location and in a secure manner that ensures that access is limited to the persons
22 authorized under this Order.

23 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
24 otherwise ordered by the court or permitted in writing by the Designating Party, a
25 Receiving Party may disclose any information or item designated
26 "CONFIDENTIAL" only to:

1 (a) the Receiving Party's Outside Counsel of Record in this Action, as
2 well as employees of said Outside Counsel of Record to whom it is reasonably
3 necessary to disclose the information for this Action;

4 (b) the officers, directors, insurers, and employees (including House
5 Counsel) of the Receiving Party to whom disclosure is reasonably necessary for
6 this Action;

7 (c) Experts (as defined in this Order) of the Receiving Party to whom
8 disclosure is reasonably necessary for this Action and who have signed the
9 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

10 (d) the court and its personnel;

11 (e) court reporters and their staff;

12 (f) professional jury or trial consultants, mock jurors, and Professional
13 Vendors to whom disclosure is reasonably necessary for this Action and who have
14 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

15 (g) the author or recipient of a document containing the information or a
16 custodian or other person who otherwise possessed or knew the information;

17 (h) during their depositions, witnesses, and attorneys for witnesses, in
18 the Action to whom disclosure is reasonably necessary provided: (1) the deposing
19 party requests that the witness sign the form attached as Exhibit 1 hereto; and (2)
20 they will not be permitted to keep any confidential information unless they sign the
21 "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless otherwise
22 agreed by the Designating Party or ordered by the court. Pages of transcribed
23 deposition testimony or exhibits to depositions that reveal Protected Material may
24 be separately bound by the court reporter and may not be disclosed to anyone
25 except as permitted under this Stipulated Protective Order; and

26 (i) any mediator or settlement officer, and their supporting personnel,
27 mutually agreed upon by any of the parties engaged in settlement discussions.
28

1 8. PROTECTED MATERIAL SUBPOENAED OR ORDER PRODUCED IN
2 OTHER LITIGATION

3 If a Party is served with a subpoena or a court order issued in other litigation
4 that compels disclosure of any information or items designated in this Action as
5 “CONFIDENTIAL,” that Party must:

6 (a) promptly notify in writing the Designating Party. Such notification shall
7 include a copy of the subpoena or court order;

8 (b) promptly notify in writing the party who caused the subpoena or order
9 to issue in the other litigation that some or all of the material covered by the
10 subpoena or order is subject to this Protective Order. Such notification shall
11 include a copy of this Stipulated Protective Order; and

12 (c) cooperate with respect to all reasonable procedures sought to be pursued
13 by the Designating Party whose Protected Material may be affected.

14 If the Designating Party timely seeks a protective order, the Party served
15 with the subpoena or court order shall not produce any information designated in
16 this action as “CONFIDENTIAL” before a determination by the court from which
17 the subpoena or order issued, unless the Party has obtained the Designating Party’s
18 permission. The Designating Party shall bear the burden and expense of seeking
19 protection in that court of its confidential material and nothing in these provisions
20 should be construed as authorizing or encouraging a Receiving Party in this Action
21 to disobey a lawful directive from another court.

22
23 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
24 PRODUCED IN THIS LITIGATION

25 (a) The terms of this Order are applicable to information produced by a
26 Non-Party in this Action and designated as “CONFIDENTIAL.” Such information
27 produced by Non-Parties in connection with this litigation is protected by the
28

1 remedies and relief provided by this Order. Nothing in these provisions should be
2 construed as prohibiting a Non-Party from seeking additional protections.

3 (b) In the event that a Party is required, by a valid discovery request, to
4 produce a Non-Party's confidential information in its possession, and the Party is
5 subject to an agreement with the Non-Party not to produce the Non-Party's
6 confidential information, then the Party shall:

7 (1) promptly notify in writing the Requesting Party and the Non-
8 Party that some or all of the information requested is subject to a confidentiality
9 agreement with a Non-Party;

10 (2) promptly provide the Non-Party with the relevant discovery
11 request(s), or a reasonably specific description of the information requested; and

12 (3) make the information requested available for inspection By the
13 Non-Party, if requested.

14 (c) If the Non-Party fails to seek a protective order from this court within
15 14 days of receiving the notice and accompanying information or any other period
16 as this Court may order, the Receiving Party may produce the Non-Party's
17 confidential information responsive to the discovery request. If the Non-Party
18 timely provides an objection or seeks a protective order, the Receiving Party shall
19 not produce any information in its possession or control that is subject to the
20 confidentiality agreement with the Non-Party before a determination by the court.
21 Absent a court order or law to the contrary, the Non-Party shall bear the burden
22 and expense of seeking protection in this court of its Protected Material.

23
24 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

25 If a Receiving Party learns that, by inadvertence or otherwise, it has
26 disclosed Protected Material to any person or in any circumstance not authorized
27 under this Stipulated Protective Order, the Receiving Party must immediately (a)
28 notify in writing the Designating Party of the unauthorized disclosures, (b) use its

1 best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform
2 the person or persons to whom unauthorized disclosures were made of all the terms
3 of this Order, and (d) request such person or persons to execute the
4 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
5 A.

6
7 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
8 PROTECTED MATERIAL

9 When a Producing Party gives notice to Receiving Parties that certain
10 inadvertently produced material is subject to a claim of privilege or other
11 protection, the obligations of the Receiving Parties are those set forth in Federal
12 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
13 whatever procedure may be established in an e-discovery order that provides for
14 production without prior privilege review. Pursuant to Federal Rule of Evidence
15 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
16 of a communication or information covered by the attorney-client privilege or
17 work product protection, the parties may incorporate their agreement in the
18 stipulated protective order submitted to the court.

19
20 12. MISCELLANEOUS

21 12.1 Right to Further Relief. Nothing in this Order abridges the right of
22 any person to seek its modification by the Court in the future.

23 12.2 Right to Assert Other Objections. By stipulating to the entry of this
24 Protective Order, no Party waives any right it otherwise would have to object to
25 disclosing or producing any information or item on any ground including grounds
26 not addressed in this Stipulated Protective Order. Similarly, no Party waives any
27 right to object on any ground to use in evidence of any of the material covered by
28 this Protective Order.

1 12.3 Filing Protected Material. A Party that seeks to file under seal any
2 Protected Material must comply with Local Civil Rule 79-5. Protected Material
3 may only be filed under seal pursuant to a court order authorizing the sealing of the
4 specific Protected Material at issue. If a Party's request to file Protected Material
5 under seal is denied by the court, then the Receiving Party may file the information
6 in the public record unless otherwise instructed by the court.

7
8 13. FINAL DISPOSITION

9 After the final disposition of this Action, as defined in paragraph 4, within
10 60 days of a written request by the Designating Party, each Receiving Party must
11 return all Protected Material to the Producing Party or, upon the Producing Party's
12 request, destroy such material. As used in this subdivision, "all Protected
13 Material" includes all copies, abstracts, compilations, summaries, and any other
14 format reproducing or capturing any of the Protected Material. Whether the
15 Protected Material is returned or destroyed, the Receiving Party must submit a
16 written certification to the Producing Party (and, if not the same person or entity,
17 to the Designating Party) by the 60 day deadline that (1) identifies (by category,
18 where appropriate) all the Protected Material that was returned or destroyed and
19 (2) affirms that the Receiving Party has not retained any copies, abstracts,
20 compilations, summaries or any other format reproducing or capturing any of the
21 Protected Material. Notwithstanding this provision, Counsel are entitled to retain
22 an archival copy of all pleadings, motion papers, trial, deposition, and hearing
23 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
24 reports, attorney work product, and consultant and expert work product, even if
25 such materials contain Protected Material. Any such archival copies that contain
26 or constitute Protected Material remain subject to this Protective Order as set forth
27 in Section 4 (DURATION).
28

1 14. VIOLATION

2 Any violation of this Order may be punished by appropriate measures
3 including, without limitation, contempt proceedings and/or monetary sanctions.

4 ///

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1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2 DATED: March 15, 2019

3
4 /s/Rachel T. Gezerseh
5 Attorneys for Plaintiff Fan Yang

6 DATED: March 15, 2019

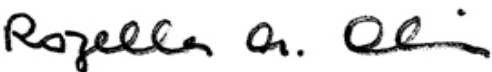
7
8 /s/Rachel T. Gezerseh
9 Attorneys for Plaintiff Fan Yang

10 DATED: March 15, 2019

11
12 /s/David Morrow
13 Attorneys for Defendant

14
15 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

16 DATED: March 19, 2019

17 
18
19 HON. ROZELLA A. OLIVER
United States Magistrate Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3
4 I, _____ [print or type full name], of
5 [print or type full address], declare under penalty of perjury that I have read in its
6 entirety and understand the Stipulated Protective Order that was issued by the
7 United States District Court for the Central District of California on [date] in the
8 case of _____ *Yang v. Toh et al*, CASE NO. 2:17-cv-06161 CAS (RAOx)
9 and related case *Zhang v. Toh et al*, CASE NO. 2:17-cv-07745 CAS (RAOx). I
10 agree to comply with and to be bound by all the terms of this Stipulated Protective
11 Order and I understand and acknowledge that failure to so comply could expose
12 me to sanctions and punishment in the nature of contempt. I solemnly promise that
13 I will not disclose in any manner any information or item that is subject to this
14 Stipulated Protective Order to any person or entity except in strict compliance with
15 the provisions of this Order.

16 I further agree to submit to the jurisdiction of the United States District Court for
17 the Central District of California for enforcing the terms of this Stipulated
18 Protective Order, even if such enforcement proceedings occur after termination of
19 this action.

20 I hereby appoint _____ [print or type full name] of
21 _____ [print or type full address and
22 telephone number] as my California agent for service of process in connection with
23 this action or any proceedings related to enforcement of this Stipulated Protective
24 Order.

25 Date: _____

26 City and State where sworn and signed: _____

27 Printed name: _____

28 Signature: _____